IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

CHRISTOPHER HARPER,) Civil Action Number:
31450 Miles Road
Solon, OH 44139)
Plaintiff,
) **COMPLAINT**

-vs-

)

CITY OF CLEVELAND, OHIO)
601 Lakeside Avenue
Cleveland, OH 44114)

) **Trial by Jury Endorsed Hereon**

and

)

CALVIN WILLIAMS)
Chief, Division of Police
City of Cleveland)
1200 Ontario Street
Cleveland, OH 44114)

and)

MICHAEL McGRATH,)
Director, Department of Public Safety
City of Cleveland)
601 Lakeside Avenue
Cleveland, OH 44114)

Defendants.)

I. INTRODUCTION

1. This action is initiated by a Cleveland police officer with fourteen (14) years at the Cleveland Hopkins International Airport who was punished on a continuing basis in retaliation for the exercise of free speech rights insured under the Constitution of the United States, in retaliation for engaging in a constitutionally protected activity and was discriminated against on the basis of race in relation to discipline meted out by the defendants.

II. PARTIES

2. Plaintiff CHRISTOPHER HARPER was a skilled African-American police officer in the City of Cleveland's Division of Police who has served with distinction and leadership at the Cleveland Hopkins International Airport ("CHIA"), a unique and important position involving the safety and security of citizens and visitors to the City of Cleveland and of those at CHIA for other purposes.

3. Defendant CITY OF CLEVELAND, OHIO is a municipal corporation established pursuant to the laws of the State of Ohio and has maintained at all relevant times a police department obligated to insure the protection of rights guaranteed under the Constitution of the United States, the United States Code, municipal policies and a collective bargaining agreement which protects Cleveland police officers at CHIA and throughout the municipal.

4. Defendant CALVIN WILLIAMS was Chief of Police of the city's Division of Police at all relevant times. Among the duties of Defendant Williams is, under color of law, to formulate, promulgate, implement and not interfere with policies, practices, acts and conduct relative to Cleveland police officers, is obligated in his official capacity under federal law, state law and a collective bargaining agreement to insure that all police officers are treated equally and fairly.

5. Defendant MICHAEL McGRATH has at all relevant times been Director of Public Safety, a former Chief of Police, and an official superior to Defendant Calvin Williams. Among the duties of Defendant McGrath is, under color of law to formulate, promulgate, implement and not interfere with policies, practices, acts and conduct relative to Cleveland police officers, is obligated in his official capacity under federal law, state law and a collective bargaining agreement to insure that all police officers are treated equally and fairly.

JURISDICTION AND CLAIMS

6. Jurisdiction of this action is conferred pursuant to 28 U.S.C. §1331 and §§ 1343 (3) and (4) for claims arising out of deprivation under color of state law of for violation of rights secured by the First Amendment to the Constitution of the United States, for violation of rights secured by both the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, pursuant to acts of Congress providing for equal rights of citizens, under the Civil Rights Act of 1870, as amended, 42 U.S.C. §1981, the Civil Rights Act of 1871, 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f), and in accordance with a Notice of Suit Rights as required under Title VII which is appended to this complaint, incorporated by reference and identified as Exhibit 1, under the Ohio Civil Rights Act, Ohio Revised Code §§4112.01, *et seq.*, as amended, under a Consent Order captioned *United States of America v. City of Cleveland,* Case No. 1:15-cv-01046-SO and pursuant to 28 U.S.C. §1367, jurisdiction is conferred for claims arising under state law.

7. Plaintiff and defendants are citizens of the State of Ohio and venue exists within the jurisdiction of the United States District Court for the Northern District of Ohio, Eastern Division because all parties are located within Cuyahoga County, Ohio and because all claims arise within Cuyahoga County, Ohio.

FACTS

8. Plaintiff Christopher Harper reasserts the foregoing procedural and related allegations and incorporates them by reference as if fully set forth herein in order to avoid repetition.

9. Plaintiff Christopher Harper has been a Cleveland police officer for twenty seven (27) years and assigned since 2001 to a specialized unit, the Cleveland Hopkins International Airport, for fourteen (14) years of his service.

10. Plaintiff Christopher Harper developed the specialized skills to insure the paramount safety and security of the citizens of and visitors to the City of Cleveland.

11. Plaintiff Christopher Harper has been acknowledged and recognized for his expertise and heroic work at a uniquely critical venue in the protection of the citizens of and visitors to the City of Cleveland.

12. Starting in 2007, defendants City of Cleveland and McGrath conceived of and attempted to implement a plan to "privatize" safety forces at the Cleveland Hopkins International Airport by attempting to bring in persons without the power to arrest or detain to the material jeopardy of the citizens of and visitors to the City of Cleveland.

13. The effort to privatize safety and security at Cleveland Hopkins International Airport was also advanced by defendant Williams after he became chief of police.

14. The sole motive by defendants behind efforts to privatize safety and security at Cleveland Hopkins International Airport (CHIA) was claimed by city officials to save money, with less concern about the ability of unlicensed private security guards and others who were not empowered to arrest and detain compared to Cleveland police officers whose specialized unit skills enhanced safety and security.

15. In fact, no cost savings were apparent because of the availability of federal funds to underwrite safety and security at Cleveland Hopkins International Airport (CHIA).

16. While the City of Cleveland formed what it called the Cleveland Airport System Business Advisory Committee to have input from prominent business management leadership, little, if any, inclusion involved recommended changes at Cleveland Hopkins International Airport (CHIA) from a labor perspective.

17. Then Cleveland Hopkins International Airport (CHIA) director Ricky Smith sought the establishment of the Committee as a license to get rid of police officers at the airport, irrespective of the impact on safety and security.

18. Plaintiff Christopher Harper led the specialized unit Cleveland police officers at Cleveland Hopkins International Airport (CHIA) officers, originally on behalf of fifty-one (51) specialized unit Cleveland police officers, who collectively appeared to express concern about replacing them with non-commissioned private security guards with no airport expertise and no airport safety and security experience.

19. Plaintiff Christopher Harper's organizational and leadership of Cleveland Hopkins International Airport (CHIA) officers blocked Defendant City of Cleveland and its airport officials in their attempt to remove licensed Cleveland police officers who have sole arrest and detain authority.

20. The organization and leadership by Plaintiff Christopher Harper to protect the safety and security of the public are First Amendment-protected activities which advanced the public interest, given the specialized nature of the work Plaintiff Christopher Harper and the other officers provided to the public.

21. In order to cut back on the costs of safety and security defendant City of Cleveland and its officials brought on Tenable private security guards who had no ability to arrest and detain to replace Cleveland police officers who ordinarily were assigned to do perimeter checks and receiving radio assignments.

22. Federal officials of the Transportation Security Administration, including TSA Cleveland chief Michael Young, were apparently supportive of the collective objections by Cleveland police officers led by Plaintiff Christopher Harper.

23. When placement by defendant City of Cleveland of Tenable security guards was generally thwarted by Plaintiff Harper and his colleagues, defendant City of Cleveland tried to convert traffic controllers to replace Cleveland police officers, but that effort was also thwarted by Cleveland police officers led by Plaintiff Christopher Harper.

24. A Cuyahoga County Court of Common Pleas ruled that the effort by defendant City of Cleveland and its officials contravened its obligation.

25. Notwithstanding, a directive of then Cleveland Hopkins International Airport (CHIA) director Ricky Smith was to avoid dispatching Cleveland police officers

and advocating for the dispatch of private security guards who had no authority to arrest and detain and which resulted in greater safety and security risks.

26. The effort to cut back police from offering safety and security was given to Jonathan Vrabel, Deputy Commissioner of Safety at Cleveland Hopkins International Airport (CHIA), under the direction of the airport director.

27. The officials named cutting back on Cleveland police officers the "Alternative Security" plan.

28. The plan anticipated "objections," but not from specialized unit Cleveland police officers led by Plaintiff Christopher Harper.

29. Instructions were to go after Plaintiff Christopher Harper for his successful leadership in fighting for safety and security of citizens and visitors, but thwarting the City of Cleveland in cutting back police.

30. Within months Plaintiff Christopher Harper starting receiving unwarranted disciplinary allegations, including obscenities by management of the City of Cleveland included in write-ups.

31. The retaliatory actions against Plaintiff Christopher Harper were witnessed and documented by other Cleveland police officers.

32. Officials of defendant City of Cleveland threatened Plaintiff Christopher Harper with loss of shift opportunities.

33. The effort by Vrabel on behalf of defendant City of Cleveland was generally unsuccessful because of the leadership role Plaintiff Christopher Harper played.

34. The effort by defendant City of Cleveland to lessen safety and security was so extreme in retaliation that it intended to hire as a traffic controller a candidate, L------ S-------, involved in fifteen (15) criminal cases, including a conviction as a sex offender.

35. As a result of the success of the leadership in protecting the public by Plaintiff Christopher Harper, defendant City of Cleveland and its officials, under color of law, formulated a plan to scrutinize the activities of the Plaintiff Christopher Harper in retaliation for his constitutionally protected activity with the view of discrediting him and punishing him to leading the effort to maintain police presence at the Cleveland Hopkins International Airport (CHIA).

36. Defendants, at the director of the chief of police and safety director, continued to personally monitor Plaintiff Christopher Harper, in order to retaliate and punish him for his public safety advocacy and protection of the collective specialized unit officers.

37. Notwithstanding, four (4) traffic controllers began working for the defendant's Department of Public Safety, although none had authority to arrest and detain, but were assigned to traffic duty, customer service and "to observe and report."

38. Defendants intended to increase traffic controllers to serve essentially as specialized unit police officers by ultimately hiring eight (8) traffic controllers in that role, despite a federal mandate that police officers were to be fulfilling the role.

39. Plaintiff Christopher Harper led his officers at the airport to join with the union in stopping defendant City of Cleveland's reduction of police officers and replacement of officers with private security guards who had no authority to arrest or detain which placed citizens and travelers in jeopardy.

40. To pressure Plaintiff Christopher Harper for further leadership in advocating for public safety and security, the same official appointing traffic controllers distributed a memorandum entitled "Full Attention to Duty," alleging that an officer "has been sleeping on duty."

41. The allegation was against Plaintiff Christopher Harper who denied the allegations.

42. Despite the absence of evidence, defendant City of Cleveland's representative wrote in hyperbole that "you [unidentified] are a risk to yourself and to every person who works and travels through this airport, including the officers that you [unidentified] work with. If you [unidentified] are exhausted from working too many hours then it is time to rethink your lifestyle."

43. The memorandum was intended to threaten, coerce and intimidate Plaintiff Christopher Harper from further advocacy.

44. Plaintiff Christopher Harper continued to advocate for safety security and security at Cleveland Hopkins International Airport for his colleagues and for the benefit of the citizens and visitors to the airport.

45. Defendant City of Cleveland and its officials decided to devote substantial time, effort, resources and funding to retaliate against Plaintiff Christopher Harper in an unprecedented and extreme manner, treating him differently than any other police officer employed by the City of Cleveland.

46. To ratchet up retaliation and discrimination and unbeknownst to Plaintiff Christopher Harper, defendant City of Cleveland and its officials installed hidden cameras and assigned individuals to monitor Plaintiff Christopher Harper on a daily basis to find inconsistencies in his duty reports and monitor on an intensive basis each of his activities.

47. Plaintiff Christopher Harper continued his public concern advocacy unaware that defendant City of Cleveland and its officials, under color of law, created a secret plan sought to coerce him to inhibit any future advocacy.

48. Plaintiff Christopher Harper openly joined with his local union in the belief that it would be necessary to return to the Cuyahoga County Court of Common Pleas because of the unlawful actions of the defendant City of Cleveland in permitting traffic controllers to replace police officers because they were not certified under Ohio law to be peace officers.

49. In retaliation, defendants increased their scrutiny of Plaintiff Christopher Harper, expending additional funding and resources for staff monitoring, hidden cameras and other time and effort to punish Plaintiff Christopher Harper for his advocacy.

50. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 5, 2013.

51. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 10, 2013.

52. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 15, 2013.

53. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 17, 2013.

54. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 22, 2013.

55. On October 22, 2013, defendants received an unsigned "anonymous" complaint which should not have been accepted under present policy under Article VIII, Section (12)(l) prohibiting administrative charges and under Section (12)(m) which required signature on a complaint rather than anonymous charges in order to trigger a proper investigation.

56. In the absence of a signed complaint, an accused bargaining unit member shall not be subject to disciplinary action on that complaint.

57. An anonymous complaint required defendants to bring an investigation within one year or a charge would be "automatically" dismissed.

58. On October 23, 2013, defendants date-stamped the charge in the chief's office.

59. Under Article XXIX, Section 74, in the event that administrative charges are filed against an officer by the Chief of Police after an investigation and such charges could give rise to criminal indictment, charges shall be disposed of within ninety (90) days.

60. Under Section 74, "charges shall be automatically dismissed" from any disciplinary action.

61. Defendants were obligated to charge Plaintiff Christopher Harper by October 23, 2014, one year from the date defendant Williams had "knowledge" under Article VIII, the date-stamped anonymous complaint of October 23, 2013.

62. The automatic dismissal of the charges should have occurred within 90 days after he could have been charged or on January 21, 2015.

63. Defendants decided to belatedly charge Plaintiff Christopher Harper on November 10, 2014.

64. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 26, 2013.

65. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on October 30, 2013.

66. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 3, 2013 and that he was late to roll call without any future warning of being late to roll call.

67. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 8, 2013.

68. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 12, 2013 and that he was late to roll call.

69. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 15, 2013 and that he was late to roll call.

70. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 20, 2013 and that he was late to roll call.

71. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on November 29, 2013.

72. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 5, 2013 and that he was late to roll call.

73. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 5, 2013 and that he was late to roll call.

74. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 6, 2013.

75. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 7, 2013 and that he was late to roll call.

76. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 9, 2013.

77. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 10, 2013.

78. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 12, 2013.

79. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 16, 2013 and that he was late to roll call.

80. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 17, 2013 and that he was late to roll call.

81. In a hyperbolic allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper with an inconsistency in a daily duty report on December 18, 2013 and that he was late to roll call.

82. In an allegation in retaliation for his advocacy and in a discriminatory manner, defendants charged Plaintiff Christopher Harper sleeping on duty, the most serious allegation.

83. White officers were never tracked and followed on the airport roadway as Plaintiff Christopher Harper was and have not been disciplined or punished in a similar manner.

84. White officers have never been subjected to discipline or punishment after the one-year mandatory period.

85. No officer who led efforts to fight reduction of Cleveland police officers at Cleveland Hopkins International Airport (CHIA) has ever been monitored in a manner defendants monitored Plaintiff Christopher Harper.

86. No officer has been disciplined or punished in a similar manner.

87. The allegations of a pattern of violations, nearly day after day, all with no prior warnings, was unprecedented and completely inconsistent with the practices and policies of defendant City of Cleveland.

88. The allegations of a pattern of violations were intended to punish Plaintiff Christopher Harper in retaliation for his advocacy and in a manner which was racially discriminatory compared to non-African-American Cleveland police officers.

89. Because the alleged disciplinary charges arose out of retaliation and discrimination and not for legitimate reasons, defendants knew that they had to charge Plaintiff Christopher Harper administratively within one (1) year after defendant Calvin Williams had "knowledge" under Article VIII, Section (12)(1) of defendants' collective bargaining agreement with plaintiff's union.

90. Because they knew the charges were baseless, defendants did not charge plaintiff Christopher Harper as required under the collective bargaining agreement which binds them.

91. On August 21, 2015 plaintiff Christopher Harper was told that if he pleaded "no contest" to the charges, he would not be subjected to severe discipline.

92. It is impossible to plead no contest in civil matters, but on August 21, 2015 Christopher Harper, nonetheless, received a thirty (30) day suspension without pay, but maintained his position at Cleveland Hopkins International Airport (CHIA).

93. On August 25, 2015, defendant Williams ordered Plaintiff Christopher Harper transferred to the Fourth District without training and with the intent of placing him in jeopardy because of lack of training for over fourteen (14) years.

94. Defendants constructively forced Plaintiff Christopher Harper to retire.

95. Plaintiff Christopher Harper has lost a differential from his drop account of $80,666.40 inclusive of interest and employer contribution annually because of his forced retirement.

96. Plaintiff Christopher Harper intended to work six and one half more years, losing $481,000.00 because of his forced retirement.

97. Plaintiff earned roughly $130,000.00 annually which would have been reduced to $56,000.00 annually because of the forced transfer by defendants Williams and McGrath.

98. The continued discrimination and retaliation have been intentional, malicious and in wanton and reckless disregard of the rights and feelings of the plaintiff.

99. As a result of the acts and conduct of the defendants, plaintiff has suffered substantial emotional, mental and physical distress.

100. As a result of the acts and conduct of the defendants, plaintiff has suffered diminution in quality and joy and life and other hedonic losses.

WHEREFORE, plaintiffs urge this court to grant the following relief:

(A) Declare that the acts and conduct of the defendants, jointly and severally, constitute violations of the First Amendment to the Constitution of the United States, denial of the right of due process and equal protection insured under the Fourteenth Amendment to the Constitution of the United States, violations of the Civil Rights Act of 1870, as amended, 42 U.S.C. §1981, the Civil Rights Act of 1871, 42 U.S.C. 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f), the Ohio Civil Rights Act, Ohio Revised Code §§4112.01, *et seq*. and pendent state law claims;

(B) Permanently enjoin the defendants, and each of them in their official capacity, from engaging in any future act or conduct which has the purpose or effect of unlawful discrimination on the basis of race or retaliation for the advocacy and support of equal employment opportunities on account of race and retaliation.

(C) Direct that the defendants, and each of them in their official capacity, undertake such affirmative steps necessary to correct the effect of a pattern and practice of racial discrimination in the promotion of the plaintiff to captain including the establishment of uniform standards for recruitment, employment and promotion which modifies historically racial imbalance existing within the division of police;

(D) Grant to plaintiff Christopher Harper appropriate personal and institutional compensatory damages, jointly and severally, against defendants;

(E) Grant to plaintiff Christopher Harper appropriate punitive damages, jointly and severally, against all defendants except defendant City of Cleveland;

(F) Grant to the plaintiff and against the defendants statutory reasonable attorney fees and costs as provided by law;

(G) Grant any additional relief which the court deems just, equitable and in advance of the public interest.

s/Avery S. Friedman
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TRIAL BY JURY DEMANDED

Plaintiff demands trial by jury.

s/Avery S. Friedman
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